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of a shareholder imposed by the corporation charter is subject to automatic novation, and perhaps on grounds of convenience rather than logic the same result would be reached here.

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STATE LEGISLATION TAKING AWAY RIGHTS PREVIOUSLY RECOGNIZED IN ADMIRALTY COURTS. — If a person, receiving injuries on the navigable waters of a state, elects to pursue his remedy in the admiralty court, will recovery be denied him because a state statute purports to extinguish rights based on such injuries? In this question there is necessarily involved the determination of what substantive law the federal admiralty courts apply. Under the common law conception of territorial sovereignty, over a single legal unit known as a state there can be but one sovereign — the state. This sovereign may delegate to another the power of deciding by legislation what rights will be predicated on certain acts done within the state territory, or may allow the representatives of the other sovereign to adjudicate these rights. By the Constitution, the states made a certain delegation of authority to the federal government in relation to maritime matters. Art. III, sec. 2, provides that "The judicial power shall extend to all cases of admiralty and maritime jurisdiction." Now before the adoption of the Constitution, rights of individuals on the sea were adjudicated in the admiralty court of each state, if the parties chose that rather than the common law forum.[1] Certain rights not known to the common law were recognized by the general maritime law,[2] upon which was based the admiralty law applied in each state admiralty court. Causes of action based on these rights could only be tried in the state admiralty courts. The confusion inevitably resulting from the diversity in the state laws, was the reason for the delegation regarding admiralty matters; and in order to effectually carry out the desire for uniformity in maritime laws shown by the Constitution, there has been implied, with the delegation to the courts, a grant to Congress of power to regulate rights over which the admiralty courts would have jurisdiction.[3] The exact scope of this power is not definitely marked out by the authorities, but its extent would seem to be the same as that of the analogous power over interstate commerce. If this view is sound, Congress has supreme power to regulate the law of all admiralty matters; but, until Congress acts, the maritime law of the individual state where the cause arose will govern; and the states may further enact laws regulating admiralty rights within their borders, on matters as to which uniformity throughout the country is not essential.

On the whole, the decisions and the language of the federal courts seem inconsistent with any other view. The fact that admiralty courts

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[1] BENEDICT, ADMIRALTY, secs. 98–104; HUGHES, ADMIRALTY, sec. 3.

[2] The Albert Dumois, 177 U. S. 240, 20 Sup. Ct. Rep. 595. The general maritime law, so called, originated much earlier than the common law, and is based on the customs of mariners. Very much as did the law merchant, it became a part of the municipal law of various countries, governing the rights and liabilities of parties to maritime transactions, when such transactions were cognizable in courts of admiralty. See BENEDICT, ADMIRALTY, 4 ed., secs. 44–49, 105–109; HUGHES, ADMIRALTY, sec. 2.

[3] *In re* Garnett, 141 U. S. 1, 11 Sup. Ct. Rep. 840.

sometimes apply substantive law based solely on state statutes,[4] is consistent only with the idea that the states have reserved to themselves the power to regulate maritime matters as to which uniformity throughout the country is unnecessary. That Congress has exclusive power to regulate admiralty matters concerning which uniformity is desirable has been squarely held;[5] that its power even over local matters is paramount, if it chooses to act, seems taken for granted.[6] Finally, as there is no federal common law,[7] the substantive law applied in admiralty must be the maritime law of the state, the application of which is delegated to the federal courts.[8]

A recent case holding that a state statute (abolishing the common law liability of employers for injury to employees and substituting therefor a compensation system) was prevented by the Constitution from applying to injuries sustained on navigable waters, seems inconsistent with the above reasoning. *The Fred E. Sander*, 208 Fed. 724. It may be argued that for a state to take away, by legislation, rights formerly adjudicated in admiralty is no less an infringement on the federal jurisdiction than is the recognition of strictly admiralty rights by state courts. But the analogy is misleading, for there is a sharp distinction between the powers of state legislatures, and those of state courts to deal with maritime matters. As seen above, state legislatures have power to act concerning local matters until Congress expresses an intent to exclusively cover the field.[9] But, on the other hand, state statutes allowing proceedings *in rem* in the state courts for marine torts are invalid, because to give common law courts jurisdiction over matters so essentially pertaining to admiralty procedure is to interfere with the exclusive *judicial* power delegated to the federal courts by the Constitution.[10] Since the statute in the principal case, like the state death statutes,[11] seems on a matter as to which uniformity is unnecessary, it is submitted that the decision is erroneous.[12]

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THE PROBLEM OF INDUSTRIAL RAILWAYS. — The services rendered by industrial railways to their proprietary industries may be of three very different kinds. 1. The railway may be a true common carrier and thus be in the position of the initial or ultimate carrier as to the shipper industry. 2. The shipper with the permission of the carrier may perform part of the service that it would otherwise be the duty

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[4] The J. E. Rumbell, 148 U. S. 1, 13 Sup. Ct. Rep. 498.

[5] The Roanoke, 189 U. S. 185, 23 Sup. Ct. Rep. 491.

[6] The language of the courts indicates clearly that if Congress does choose to act in a matter, it is paramount to all state action. See Butler *v.* Boston Steamship Co., 130 U. S. 527, 556–558, 9 Sup. Ct. Rep. 612, 618–619.

[7] Western Union Tel. Co. *v.* Call Pub. Co., 181 U. S. 92; Swift *v.* Phil. Reading R. Co., 64 Fed. 59.

[8] See The City of Norwalk, 55 Fed. 98–105.

[9] *Supra*, Note 4.

[10] The Hine *v.* Trevor, 4 Wall. (U. S.) 555.

[11] The Hamilton, 207 U. S. 398.

[12] The actual holding might be supported on the ground that the statute, by proper construction, has no application at all to workmen injured on navigable waters. But the court deems it necessary to force this construction to prevent the act being unconstitutional. The construction taken certainly was not the natural one, and it is submitted that it was entirely unnecessary. But *Cf.* Steamboat New York *v.* Rea, 18 How. (U. S.) 223; The Henry B. Smith, 195 Fed. 312.